

5-1-1977

## Kiev and the Montreux Convention: The Aircraft Carrier That Became a Cruiser to Squeeze through the Turkish Straits

F. David Froman

Follow this and additional works at: <https://digital.sandiego.edu/sdlr>



Part of the [Law of the Sea Commons](#)

---

### Recommended Citation

F. D. Froman, *Kiev and the Montreux Convention: The Aircraft Carrier That Became a Cruiser to Squeeze through the Turkish Straits*, 14 SAN DIEGO L. REV. 681 (1977).

Available at: <https://digital.sandiego.edu/sdlr/vol14/iss3/11>

This Comments is brought to you for free and open access by the Law School Journals at Digital USD. It has been accepted for inclusion in *San Diego Law Review* by an authorized editor of Digital USD. For more information, please contact [digital@sandiego.edu](mailto:digital@sandiego.edu).

KIEV AND THE MONTREUX CONVENTION:  
THE AIRCRAFT CARRIER THAT BECAME  
A CRUISER TO SQUEEZE THROUGH  
THE TURKISH STRAITS

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."<sup>1</sup>

On July 18, 1976, the 40,000-ton Soviet naval vessel *Kiev*, sporting a 600-foot flight deck<sup>2</sup> and a complement of helicopters and fixed-wing aircraft,<sup>3</sup> steamed into the Mediterranean after completing its transit of the Turkish Straits.<sup>4</sup> The Montreux Convention, which governs transit of the Turkish Straits, limits the aggregate tonnage of all foreign naval forces in transit through the Straits to 15,000 tons.<sup>5</sup> Only in the case of capital ships<sup>6</sup> does it allow Black Sea powers to exceed this limit.<sup>7</sup> Although the Convention's definition of *capital ships* includes cruisers, it specifically excludes aircraft carriers.<sup>8</sup> Nevertheless, Istanbul's military port authorities ac-

---

1. L. CARROLL, *THROUGH THE LOOKING-GLASS* 94 (Random House spec. ed. 1946).

2. *JANE'S FIGHTING SHIPS* 1975-76, at 551 (J. Moore ed. 1975) [hereinafter cited as *JANE'S*].

3. *AV. WEEK & SPACE TECH.*, Aug. 2, 1976, at 14.

4. *N.Y. Times*, July 19, 1976, at 4, col. 4.

5. Convention Regarding the Régime of the Straits, with Annexes and Protocol, July 20, 1936, art. 14, 173 L.N.T.S. 213, 222-23 [hereinafter cited as *Montreux Convention*].

6. Battleships and cruisers are examples of capital ships.

7. *Montreux Convention*, *supra* note 5, art. 11.

8. *Id.* annex II, pt. B(1). See text accompanying note 113 *infra*.

cepted the Soviet classification of "antisubmarine cruiser" and allowed the *Kiev* to pass.<sup>9</sup>

Did the *Kiev*'s transit violate the Convention? In attempting to answer that question, this Comment will first focus upon the Turkish Straits in their historical perspective. It will then review the Montreux Convention and its relevant provisions, measuring the *Kiev* and its transit against the standards established by those provisions. Finally, it will assess the future of the Montreux Convention and the prospects for its revision.

#### THE IMPORTANCE OF THE TURKISH STRAITS

The Turkish Straits include the Bosphorus, the Sea of Marmara, and the Dardanelles.<sup>10</sup> The river-like Bosphorus, to the northeast, is about eighteen miles long and varies in width from about 800 yards to two and three-quarters miles at the Black Sea entrance. The Dardanelles, to the southwest, are about forty-seven miles long and average three to four miles in width. The Sea of Marmara lies between.<sup>11</sup> The Straits, wholly within the territory of Turkey, form a vital avenue of commerce between the landlocked Black Sea and the Aegean Sea, which opens into the Mediterranean.<sup>12</sup> The struggle for control of these straits is as old as ancient Greece and has constituted one of the major themes of diplomatic history and international law.<sup>13</sup>

The Straits are important both economically and strategically—economically as an avenue of maritime commerce between Black Sea nations and the rest of the world, strategically as a checkpoint against ingress to or egress from the Black Sea.<sup>14</sup> The factor which brings them to the fore of world politics is the geographic

---

9. Washington Post, July 19, 1976, § A, at 16, col. 1.

10. These areas were known to the ancients as the Bosphorus, the Propontis, and the Hellespont. F. VÁLI, *THE TURKISH STRAITS AND NATO 3-4* (1972) [hereinafter cited as VÁLI, STRAITS].

11. See Figure 1, taken from MAJOR MIDDLE EASTERN PROBLEMS IN INTERNATIONAL LAW 67 (M. Khadduri ed. 1972) [hereinafter cited as MIDDLE EASTERN PROBLEMS]. Istanbul (formerly Constantinople), a city of over two million inhabitants, lies at the junction of the Bosphorus and the Sea of Marmara.

12. *Id.* at 67.

13. *Id.* at 65. For the history of the Straits from antiquity to 1940, see J. SHOTWELL & F. DEÁK, *TURKEY AT THE STRAITS* (1940).

14. MIDDLE EASTERN PROBLEMS, *supra* note 11, at 65-66.

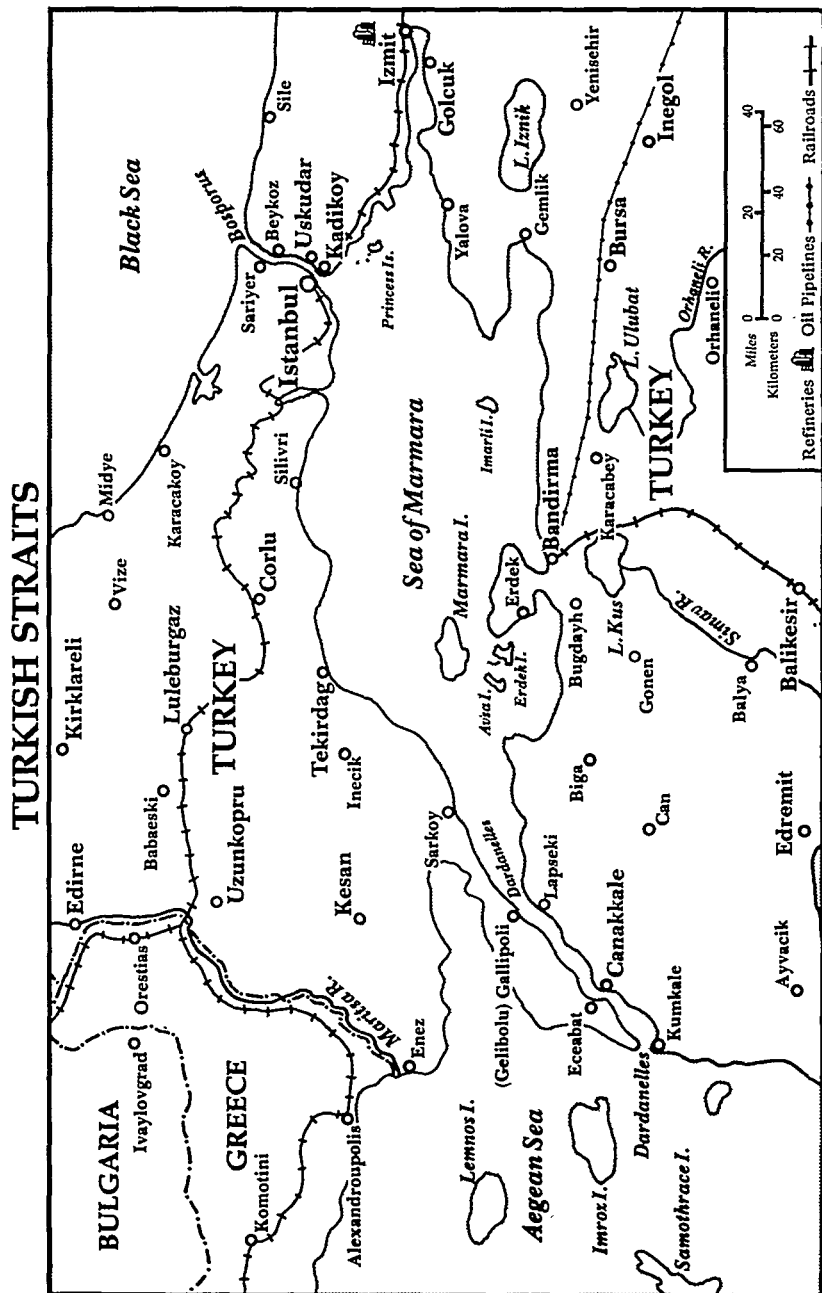


Figure 1

position of the Soviet Union, for which the Straits constitute a vital economic and military artery.<sup>15</sup> Although the Soviet Union has busy ports on all coasts, the busiest are those on the Black Sea.<sup>16</sup> The persistent struggle by the Tsars and their successors for egress to the Mediterranean<sup>17</sup> has closely intertwined the history of the Straits with that of Russia and the Soviet Union.<sup>18</sup> With the rise of the Soviet Union as a world naval power, its maintenance of a major fleet of warships in the Black Sea, and its extensive ship-building efforts in Black Sea ports, access to the Straits has again become a strategic question of prime importance.

While the Straits are important to the Soviet Union, they are far more important to Turkey because they constitute the major factor of Turkish national interest, sovereignty, and security.<sup>19</sup> Their narrow passage is well adapted for defense. Even the most powerful navies and the strongest armies have failed to penetrate or to occupy them.<sup>20</sup> For five centuries Turkey has based its national existence and security on the Straits.<sup>21</sup> Of necessity, questions concerning the use of the Straits are of supreme importance to Turkey.

The Straits are also important to the other Black Sea nations, Romania and Bulgaria, and to many countries which trade with the Black Sea nations or whose merchant ships carry cargo through the Straits.<sup>22</sup> The United States' interest in the Straits has evolved from primarily an economic one at the time of the Montreux Conference to a strategic one today.<sup>23</sup>

---

15. Bilsel, *The Turkish Straits in the Light of Recent Turkish-Soviet Russian Correspondence*, 41 AM. J. INT'L L. 727, 731 (1947).

16. *Id.* Only the Black Sea ports remain ice-free the year around.

17. *Id.* at 732; Gorshkov, *Navies in War and in Peace* (pt. 3), U.S. NAVAL INST. PROC., Mar. 1974, at 51, 54-55.

18. Bilsel, *International Law in Turkey*, 38 AM. J. INT'L L. 546, 556 (1944). On Russian attempts to gain access through the Straits, see Gorshkov, *Navies in War and in Peace* (pt. 2), U.S. NAVAL INST. PROC., Feb. 1974, at 27.

19. Bilsel, *Straits*, *supra* note 15, at 732.

20. *Id.* at 731. After losing four battleships, the British Navy in 1915 gave up its attempt to run the Straits. In 1916, a half-million allied soldiers failed to penetrate the Straits. VÁLÍ, STRAITS, *supra* note 10, at 9.

21. Bilsel, *Straits*, *supra* note 15, at 732.

22. The chief Romanian delegate at Montreux described the Straits as "the very lungs of Roumania." *Id.* at 733. Richard Washburn Child, American Chief Observer at Lausanne, voiced the interests of non-signatories in the Straits: "This discussion involves freedom of all those nations outside the Straits who desire to reach them on their friendly errands . . . . We cannot accept the position that the future of commerce in the Black Sea is the exclusive affair of the states bordering upon it." *Quoted in* Bilsel, *International Law*, *supra* note 18, at 551.

23. Letter from the Ambassador in Turkey to the Secretary of State (Apr.

## THE REGIME OF THE STRAITS

*The Law of International Straits*

The right of free passage through international straits stems from State practice hardening into customary international law and thence into treaty law.<sup>24</sup> By the beginning of World War I, the customary law had developed to the point that "the right of passage of *merchant vessels* in international straits was certain, and *warships* were supposed to have the same right—though not with the same degree of certainty."<sup>25</sup> In 1947, the *Corfu Channel Case*<sup>26</sup> firmly established that right for warships:

It is . . . generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. *Unless otherwise prescribed in an international convention*, there is no right for a coastal State to prohibit such passage through straits in time of peace.<sup>27</sup>

---

23, 1936) reprinted in [1936] 3 FOREIGN REL. U.S. 512, 513 (1953):

The Government of the United States has, as I understand the matter, no treaty right, direct or indirect, with respect to the Straits Convention; nor has it any concern with the military and political aspects of that Convention; its sole practical interest in the matter is the maintenance (or perhaps the amelioration) of the régime of freedom of commercial navigation through the Straits.

Very probably, the decline of the American merchant fleet and the dramatic rise of the Soviet Navy account for this shift of interest.

24. R. BAXTER, *THE LAW OF INTERNATIONAL WATERWAYS* 168 (1964) [hereinafter cited as BAXTER]. On the right of passage through international straits, see Cundick, *International Straits: The Right of Access*, 5 GA. J. INT'L & COMP. L. 107 (1975); Deddish, *The Right of Passage by Warships Through International Straits*, 24 JAG J. 79 (1970); Grandison & Meyer, *International Straits, Global Communications, and the Evolving Law of the Sea*, 8 VAND. J. TRANSN'T'L L. 393 (1975); McNees, *Freedom of Transit Through International Straits*, 6 J. MARITIME L. 175 (1975); Smith, *Politics of Lawmaking: Problems in International Maritime Regulation—Innocent Passage v. Free Transit*, 37 U. PITT. L. REV. 487 (1976); Note, *Peacetime Passage by Warships Through Territorial Straits*, 50 COLUM. L. REV. 220 (1950); Comment, *Free Transit in Territorial Straits: Jurisdiction on an Even Keel?*, 3 CAL. W. INT'L L.J. 375 (1973); Comment, *Passage Through International Straits: Free or Innocent? The Interests at Stake*, 11 SAN DIEGO L. REV. 815 (1974).

25. 1 E. BRÜEL, *INTERNATIONAL STRAITS: A TREATISE ON INTERNATIONAL LAW* 202 (1947).

26. *The Corfu Channel Case*, [1949] I.C.J. 4.

27. *Id.* at 28 (emphasis deleted and added).

This exception pointed clearly to the Turkish Straits, which were then governed by the Montreux Convention.<sup>28</sup> Thus, to the general right of free passage of warships through international straits enunciated in the *Corfu Channel Case*, an exception was made for the Turkish Straits.<sup>29</sup> At this point the law was clear.

However, the 1958 Convention on the Territorial Sea and the Contiguous Zone obscured the matter by confounding the bodies of law relating to the right of transit through international straits and to the right of innocent passage through the territorial sea.<sup>30</sup> In a section dealing with innocent passage in the territorial sea, the Convention declared a rule applicable to all ships: "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state."<sup>31</sup> While this provision omits reference to straits covered by international agreements, a later provision exempting "conventions or other international agreements already in force, as between States Parties to them," is generally understood to except the Turkish Straits from its operation.<sup>32</sup>

If the law regarding transit of warships through the Turkish Straits is inconsistent with that generally applicable to international straits, the difference is due to the special position of the Black Sea, rather than to any internal inconsistency in the international law of straits.<sup>33</sup> Because considerations of history and geography have combined to place the Turkish Straits in a position which has no exact counterpart among the other waterways of the world, the law of the Straits cannot be found in the general law applicable to other international waterways. Rather, it must be

---

28. BAXTER, *supra* note 24, at 164 n.77; McNees, *Freedom of Transit*, *supra* note 24, at 200 n.111.

29. BAXTER, *supra* note 24, at 165.

30. *See id.* at 166-67.

31. Convention on the Territorial Sea and Contiguous Zone, *done at Geneva*, Apr. 29, 1958, art. 16, para. 4, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

32. *Id.* art. 25. *See* Johnson, *Some Legal Problems of International Waterways, with Particular Reference to the Straits of Tiran and the Suez Canal*, 31 MODERN L. REV. 153, 158 (1968). *Cf.* United Nations Third Conference on the Law of the Sea Revised Single Negotiating Text, which provides under Part II, Chapter II, entitled *Straits used for international navigation*:

Nothing in this Chapter shall affect:

(c) The legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

U.N. Doc. A/CONF. 62/WP. 8/Rev. 1/Pt. II, art. 34, at 22 (1976).

33. BAXTER, *supra* note 24, at 166.

sought in those specific customs and agreements which have grown out of the historic use and control of this unique waterway.<sup>34</sup>

### *The Historic Regime of the Turkish Straits*

For three hundred years following the Turkish consolidation of control over the Balkans and the Black Sea in the fifteenth century, the Ottoman Porte prohibited passage of foreign ships through the Straits.<sup>35</sup> In 1774, Turkey recognized Russia as a Black Sea power and granted rights of passage for its merchant vessels.<sup>36</sup> By the time of the signing of the Treaty of Paris in 1856, the principle of free commercial navigation of the Turkish Straits had become universal.<sup>37</sup> Except for the passage of Russian warships during three emergency occasions between 1774 and 1840,<sup>38</sup> the Straits remained closed to warships until the Lausanne Treaty of 1923, which adopted the principle of freedom of transit and of navigation by sea and by air through the Straits, restricting warships only as to numbers.<sup>39</sup> The Lausanne Treaty represented a radical departure from previous practice, yet by itself it could not alter the centuries-old customary law prohibiting transit of warships through the Straits.<sup>40</sup> By restating the principle of free transit and navigation by sea through the Straits (although maintaining

34. See *id.* at 193.

35. MIDDLE EASTERN PROBLEMS, *supra* note 11, at 66. For a discussion of early Ottoman practice, see 2 BRÜEL, *supra* note 25, at 252-72.

36. MIDDLE EASTERN PROBLEMS, *supra* note 11, at 66. For the text of the Treaty of Küçük Kainarja, see 1 J. HUREWITZ, DIPLOMACY IN THE NEAR AND MIDDLE EAST 54-61 (1956). The Turkish Straits are mentioned in about twenty conventions of historical importance between 1774 and 1921. Five independent treaties deal solely with the Straits: London, 1841; Paris, 1856; London, 1871; Lausanne, 1923; and Montreux, 1936. Bilse, *International Law*, *supra* note 18, at 550.

37. MIDDLE EASTERN PROBLEMS, *supra* note 11, at 66. The treaty of Paris demilitarized the Black Sea. On the treatment of Turkey at the Treaty of Paris, see Wood, *The Treaty of Paris and Turkey's Status in International Law*, 37 AM. J. INT'L L. 262 (1943).

38. F. VÁLI, BRIDGE ACROSS THE BOSPORUS 183 (1971).

39. Convention Relating to the Régime of the Straits, July 24, 1923, 28 L.N.T.S. 115.

40. Compare Fenwick, *The New Status of the Dardanelles*, 30 AM. J. INT'L L. 701, 702-03 (1936), with Baxter, *Multilateral Treaties As Evidence of Customary International Law*, 41 BRIT. Y.B. INT'L L. 275 (1965-66), and Jordan, *Creation of Customary International Law by Way of Treaty*, 9 A.F. JAG L. REV. 38 (1967). Concerning custom as a source of international law, see J. BRIERLY, THE LAW OF NATIONS 59-62 (6th ed. 1963).



certain restrictions on warships), the Montreux Convention of 1936 laid to rest this "ancient rule of the Ottoman Empire." In so doing, not only did it establish treaty law among its signatories, but it also further solidified an emerging customary law of the Straits which had its roots in the Lausanne Treaty.<sup>41</sup>

### *The Montreux Convention*

Early in 1936, Turkey called for a revision of the Lausanne Treaty in order to terminate that treaty's onerous provisions demilitarizing the Turkish Straits.<sup>42</sup> Fearing for its national security in the face of the widespread rearmanent of Europe, Turkey desired to refortify the Straits<sup>43</sup> by seeking a revision of the Straits Regime at a conference of the Lausanne Treaty signatories.<sup>44</sup> Only Italy declined to participate.

The Montreux Conference met from June 22 to July 20, 1936, and produced an agreement comprising twenty-nine articles, four

---

41. Cf. Jordan, *supra* note 40, at 53:

Treaties may change, modify, or simply restate existing rules of customary international law. It is . . . generally accepted that new rules of customary international law may be inferred from the appearance of the same provisions in agreement after agreement, whether bilateral or multilateral.

Examples of this law creating method may be found in treaties on the use of systems of international waters . . . .

42. Note, *The Straits Convention of Montreux*, 18 BRIT. Y.B. INT'L L. 186, 187 (1937). In return for the demilitarization, "the high contracting parties, with special reference to France, the United Kingdom, Italy, and Japan, guaranteed Turkey against attack on the Straits." *Id.* For developments leading to the Montreux Convention, see A. TOYNBEE, *SURVEY OF INTERNATIONAL AFFAIRS*, 1936, at 584-641 (1937). For U.S. diplomatic correspondence concerning these developments, see [1934] 2 FOREIGN REL. U.S. 971-90 (1951); [1935] 1 FOREIGN REL. U.S. 1026-42 (1953); [1936] 3 FOREIGN REL. U.S. 503-29 (1953).

43. See Letter from the Ambassador in Turkey to the Secretary of State (July 3, 1935), *reprinted in* [1935] 1 FOREIGN REL. U.S. 1034 (1953); Note from the Turkish Government to the Parties to the Lausanne Treaty of 1923 (Apr. 10, 1936), *reprinted in* [1936] 3 FOREIGN REL. U.S. 503 (1953); Letter from the Ambassador in Turkey to the Secretary of State (Apr. 14, 1936), *id.* at 506, 508-09; Letter from the Ambassador in the United Kingdom to the Secretary of State (Apr. 20, 1936), *id.* at 511; Memorandum by the American Ambassador of a Conversation with the Turkish Minister for Foreign Affairs (Apr. 22, 1936), *id.* at 514, 517.

44. Commentators have commended the Turkish government for seeking revision of the Lausanne regime rather than unilaterally denouncing it. Bilse, *International Law*, *supra* note 18, at 546, 549; Fenwick, *supra* note 40, at 701, 703; Memorandum, *supra* note 43, at 517. But see Letter from the Ambassador in Turkey (Apr. 14, 1936), *supra* note 43, at 509, suggesting a moderating British influence. Parties to the Lausanne Treaty included the British Empire, France, Italy, Japan, Bulgaria, Greece, Romania, Soviet Russia, Yugoslavia, and Turkey.

annexes, and one protocol.<sup>45</sup> This agreement reaffirmed the principle of freedom of transit and navigation of the Straits by sea,<sup>46</sup> providing that the principle shall continue without limit of time.<sup>47</sup> The agreement limited application of specific provisions, however, to twenty years or until two years after notice of denunciation has been given by a High Contracting Party, whichever period proved longer.<sup>48</sup>

The Convention substantially repeated the 1923 provisions regarding merchant shipping, but at the urging of the Soviet Union, it altered provisions regulating transit of warships. Still an outlaw among nations in 1923, the Soviet Union employed its newly gained status and respectability as a member of the League of Nations, an ally of Republican France, and a growing military power to bargain at Montreux for greater restrictions on entry of foreign warships into the Black Sea.<sup>49</sup> However, the resulting terms represented a compromise between the Soviet position of excluding all foreign warships and the British and Japanese positions favoring equal transit rights for warships of all nations.<sup>50</sup>

---

45. The Convention includes five sections: Section I, Merchant Vessels (arts. 2-7); Section II, Vessels of War (arts. 8-22); Section III, [Civil] Aircraft (art. 23); Section IV, General Provisions (arts. 24 & 25); and Section V, Final Provisions (arts. 26-29). The General Provisions designate the Turkish government as the supervising authority for the Régime of the Straits and provide that nothing in the Convention shall prejudice the rights and obligations of the Parties, members of the League of Nations, arising out of the Covenant of the League of Nations. The Final Provisions deal with ratification, accession, duration, amendment, denunciation, and revision.

The English text quoted herein was translated by His Britannic Majesty's Foreign Office from the French Official Text registered with the League of Nations on December 11, 1936.

For a review of the major issues discussed at the Convention and the views of the parties regarding them, see Royal Institute of International Affairs, Montreux Straits Convention, 1936 (Aug. 1936) (on file in the office of the *San Diego Law Review*).

46. Montreux Convention, *supra* note 5, art. 1.

47. *Id.* art. 28.

48. *Id.*

49. See Memorandum, *supra* note 43, at 516; Fenwick *supra* note 40, at 703, 705-06. See also Letter from the Ambassador in the Soviet Union to the Secretary of State (Apr. 24, 1936), reprinted in [1936] 3 FOREIGN REL. U.S. 518 (1953).

50. Memorandum, *supra* note 43, at 516; Telegram from the Consul at Geneva to the Secretary of State (June 26, 1936), reprinted in [1936] 3 FOREIGN REL. U.S. 524 (1953); cf. Telegram from the Consul at Geneva to

The articles governing transit of warships allow free transit during peacetime<sup>51</sup> for light surface vessels,<sup>52</sup> minor war vessels,<sup>53</sup> and auxiliary vessels<sup>54</sup> of both Black Sea and non-Black Sea powers<sup>55</sup> up to an aggregate of 15,000 tons or nine vessels in transit at any one time.<sup>56</sup> Each transit must be preceded by diplomatic notification to the Turkish government,<sup>57</sup> commenced

---

the Secretary of State (June 23, 1936), *id.* at 522: "[T]he real problem of the Conference is seen to lie in an adjustment of the British and Russian positions."

51. In time of war, if Turkey is not belligerent, warships enjoy the same freedom of transit as during peacetime. Warships of belligerent powers, however, are prohibited from transiting except to render assistance pursuant to a mutual assistance pact binding on Turkey or to return to base after being separated therefrom. Montreux Convention, *supra* note 5, art. 19.

In time of war, if Turkey is a belligerent, passage of warships is left entirely to the discretion of the Turkish government. *Id.* art. 20. The same discretionary power applies when Turkey considers itself threatened with danger of war. *Id.* art. 21.

52. *Light Surface Vessels* are surface vessels of war other than aircraft-carriers, minor war vessels or auxiliary vessels, the standard displacement of which exceeds 100 tons (102 metric tons) and does not exceed 10,000 tons (10,160 metric tons), and which do not carry a gun with a calibre exceeding 8 in. (203 mm.).

*Id.* annex II, pt. B (3).

53. *Minor War Vessels* are surface vessels of war, other than auxiliary vessels, the standard displacement of which exceeds 100 tons (102 metric tons) and does not exceed 2,000 tons (2,032 metric tons), provided they have none of the following characteristics:

- (a) Mount a gun with a calibre exceeding 6.1 in (155 mm.);
- (b) Are designed or fitted to launch torpedoes;
- (c) Are designed for a speed greater than twenty knots.

*Id.* annex II, pt. B (5).

54. *Auxiliary Vessels* are naval surface vessels the standard displacement of which exceeds 100 tons (102 metric tons), which are normally employed on fleet duties or as troop transports, or in some other way than as fighting ships, and which are not specifically built as fighting ships, provided they have none of the following characteristics:

- (a) Mount a gun with a calibre exceeding 6.1 in. (155 mm.);
- (b) Mount more than eight guns with a calibre exceeding 3 in. (76 mm.);
- (c) Are designed or fitted to launch torpedoes;
- (d) Are designed for protection by armour plate;
- (e) Are designed for a speed greater than twenty-eight knots;
- (f) Are designed or adapted primarily for operating aircraft at sea;
- (g) Mount more than two aircraft-launching apparatus.

*Id.* annex II, pt. B (6).

55. *Id.* art. 10.

56. *Id.* art. 14. Auxiliaries which are "specifically designed for the carriage of fuel, liquid or non-liquid" and which carry less than a specified armament are not counted, provided they pass singly. *Id.* art. 9. The 10,000-ton limit for light surface vessels provides the upper limit on the displacement of any single warship in transit. Compare *id.* annex II, pt. B (3), with *id.* art. 14.

57. The Convention requires eight days notice from Black Sea powers and fifteen days notice from non-Black Sea powers. "The notification shall specify the destination, name, type and number of the vessels, . . . the date

in daylight,<sup>58</sup> and effected expeditiously.<sup>59</sup> Warships in transit may under no circumstances operate any aircraft they are carrying.<sup>60</sup>

Consonant with the restrictions it places on warships of foreign powers,<sup>61</sup> the Convention accords certain privileges to Black Sea powers. The most important allows Black Sea powers to exceed the 15,000-ton limitation in the case of capital ships,<sup>62</sup> provided they pass singly, escorted by not more than two destroyers.<sup>63</sup> Another establishes a limited right of transit for submarines belonging to Black Sea powers.<sup>64</sup>

Article 8 provides that definitions relating to war vessels and their specifications and to calculation of tonnages shall be as set forth in Annex II.<sup>65</sup> At the outset, Annex II defines *standard displacement*<sup>66</sup> and *ton*.<sup>67</sup> Then it lists and describes in detail six

---

of entry for the outward passage and, if necessary, for the return journey." *Id.* art. 13.

58. *Id.* art. 10.

59. *Id.* art. 16.

60. *Id.* art. 15 (quoted in note 114 and accompanying text *infra*).

61. The aggregate tonnage of foreign warships allowed in the Black Sea is set at 30,000 tons but may rise proportionately with an increase in the size of the strongest Black Sea fleet to a maximum of 45,000 tons, if that fleet first increases by at least 10,000 tons. Further, no foreign warship may remain in the Black Sea longer than 21 days. *Id.* art. 18.

62. *Id.* art. 11. For the definition of capital ships, see text accompanying note 113 *infra*.

63. Montreux Convention, *supra* note 5, art. 11.

64. Submarines purchased or constructed outside the Black Sea may transit to join their bases in the Black Sea; those stationed in the Black Sea may transit for repairs at a base outside the Black Sea. In either case adequate notice must be given to Turkey, and each submarine must travel singly, by day, and on the surface. *Id.* art. 12.

A privilege accorded solely to Turkey, but which may be exercised in favor of any nation, allows a naval force of any tonnage or composition to pay a courtesy visit of limited duration to a port in the Straits at the invitation of the Turkish government. Any such force, however, must leave the Straits by the same route as that by which it entered, unless it otherwise fulfills the conditions required for transit through the Straits. *Id.* art. 17.

65. The wording of Annex II was taken from the London Naval Treaty of March 25, 1936, 50 Stat. 1363, T.S. No. 919, 184 L.N.T.S. 115.

66. Annex II defines separately the standard displacement of surface vessels and submarines. Only that of surface vessels is relevant here.

The standard displacement of a surface vessel is the displacement of the vessel, complete, fully manned, engined, and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions and fresh water for crew, miscellaneous stores and implements of every description that are intended to be carried in war, but without fuel or reserve feed water on board.

67. The word *ton* except in the expression *metric ton* denotes the ton of 2,240 lb. (1,016 kilos).

categories of warships: capital ships,<sup>68</sup> aircraft carriers,<sup>69</sup> light surface vessels,<sup>70</sup> submarines,<sup>71</sup> minor war vessels,<sup>72</sup> and auxiliary vessels.<sup>73</sup>

The Convention concludes with a protocol allowing Turkey to "immediately remilitarise the zone of the Straits" and to provisionally apply the regime specified in the Convention commencing on August 15, 1936. The Protocol became effective upon the signing of the Convention on July 20, 1936. The following day, Turkish troops reoccupied the Straits.<sup>74</sup>

Contemporary commentators differed regarding the effect of the Convention. One saw great legal and political significance in the Convention's removal of the servitude imposed by the Treaty of Paris with respect to Russian armed vessels in the Black Sea and in its freeing Russia to send its warships into the Aegean practically without restriction, while at the same time restricting the rights of non-Black Sea powers to send their warships into the Black Sea. He viewed the resulting situation as marking a new era in the relations of the successor governments to the old Muscovite and Ottoman empires. To him, the political significance of the treaty far exceeded its legal significance.<sup>75</sup>

Another commentator saw more restrictions but no material alteration from the Lausanne regime. He contended that contrary to suggestions that the Montreux Convention altered the balance of power in the Mediterranean, only the details had changed. Furthermore, he saw a new and severe restriction on all powers: Passage in wartime, if Turkey was not a belligerent, was forbidden entirely to all belligerents except in the case of action under the League of Nations Covenant or against an aggressor under a mutual

---

68. See text accompanying note 113 *infra*.

69. See text accompanying note 81 *infra*.

70. See note 52 *supra*.

71. Submarines are all vessels designed to operate below the surface of the sea.

72. See note 53 *supra*.

73. See note 54 *supra*. Annex II also sets forth criteria for determining if a given vessel is "over-age." Of the remaining Annexes, Annex I sets forth taxes and charges on merchant vessels; Annex III deals with three over-age Japanese training ships; and Annex IV establishes the method of calculating the strength of Black Sea fleets under Article 18.

74. See Telegram No. 36 from the Ambassador in Turkey to the Secretary of State (July 22, 1936), *reprinted in* [1936] 3 FOREIGN REL. U.S. 526 (1953). See also the exchange of telegrams between the Secretary of State and the Ambassador in Turkey (Apr. 20 & 21, 1936), *id.* at 510, 512.

75. Fenwick, *supra* note 40, at 705-06.

assistance pact to which Turkey was a party.<sup>76</sup>

Although the Montreux regime again came to the political fore at the end of World War II when Stalin attempted to gain a foothold in the Straits,<sup>77</sup> the Convention has yet to be amended, revised, or denounced by the parties. Thus, the 1936 Montreux Convention supplied the entire law in effect at the time *Kiev* transited the Turkish Straits.

#### QUESTIONS RAISED BY THE *Kiev's* TRANSIT

##### *Did the Kiev's Transit Violate the Montreux Convention?*

Opinions are divided on this question. The parties to the Convention who have expressed their views publicly say that no violation occurred,<sup>78</sup> while many Western observers believe a violation did occur.<sup>79</sup> One of these observers, Captain John E. Moore (Royal

76. Note, *supra* note 42, at 188. But see Memorandum by the American Ambassador of a Conversation with the Turkish Minister for Foreign Affairs (July 25, 1936), reprinted in [1936] 3 FOREIGN REL. U.S. 527 (1953):

[A mutual assistance treaty] was altogether out of the question, as Turkey has no present or imaginable intention to become a party to such a treaty; so the proviso was based on a condition contrary to fact and therefore meaningless save as it was acceptable to the French and Soviet Governments because enabling them to make it appear to their home constituencies that the Conference had given them some additional element of security.

77. On Soviet attempts to seize the Straits, see VÁLI, STRAITS, *supra* note 10, at 58-81. For texts of the ensuing diplomatic correspondence, see *id.* at 224-97; U.S. DEP'T OF STATE, PUB. NO. 2752, THE PROBLEM OF THE TURKISH STRAITS 47-68 (1947). See also Bilsel, *Straits*, *supra* note 15, at 739-47; Xydis, *New Light on the Big Three Crisis over Turkey in 1945*, 14 MIDDLE EAST J. 416 (1960). For Turkish-American relations after World War II, see G. KEENAN, MEMOIRS, 1925-1950, at 313-24 (1967); G. KIRK, SURVEY OF INTERNATIONAL AFFAIRS: THE MIDDLE EAST, 1945-1950, at 21-56 (1954); 2 H. TRUMAN, MEMOIRS 96-109 (1956).

78. In response to the author's inquiries, the governments of Greece, Australia, Turkey, and Great Britain indicated that they have made no official statements on the matter. But see the remarks of Lord Goronwy-Roberts, British Minister of State for the Foreign and Commonwealth Office, in the House of Lords:

What is regrettable is that notification was made in terms of a vessel described as a cruiser but which is clearly more describable as an aircraft carrier. We take the view that, under the Montreux Convention, an aircraft carrier is not in the class of vehicles which ought to be allowed transit. It would seem to us—and I hope that I am wrong—to have circumvented the spirit, if not the terms, of the Convention.

373 PARL. DEB., H.L. (5th ser.) 1039-40 (July 26, 1976).

79. The United States has not taken an official position concerning the transit. For NATO's position, see Prina, *Defense in Depth*, SEA POWER, Sept. 1976, at 8, 11; NAVY TIMES, Aug. 23, 1976, at 26; The Times (London),

Navy, retired), editor of *Jane's Fighting Ships* and a respected authority on world navies, asserts that the *Kiev's* transit "flagrantly breached" the Montreux Convention.<sup>80</sup>

Arriving at a logical, as opposed to a political, answer to this question requires reducing it to its factual and legal components. The factual component involves whether the *Kiev* is an aircraft carrier; the legal component inquires whether the Montreux Convention prohibits transit of aircraft carriers. Affirmative answers to both questions indicate that the *Kiev's* transit violated the Montreux Convention. A negative answer to either shows that no violation occurred.

The evidence available to aid in determining the first of these issues includes the *Kiev's* designation, its appearance, and a comparison of its dimensions, armament, aircraft, and missions with those of other similarly classified or similarly configured ships. The standard against which this evidence must be compared is the definition of aircraft carriers found in Annex II to the Convention, for regardless of whether the *Kiev* looks like an aircraft carrier, the important question is whether it is an aircraft carrier within the meaning of the Montreux Convention:

*Aircraft-Carriers* are surface vessels of war, whatever their displacement, designed or adapted primarily for the purpose of carrying and operating aircraft at sea. The fitting of a landing-on or flying-off deck on any vessel of war, provided such vessel has not been designed or adapted primarily for the purpose of carrying and operating aircraft at sea, shall not cause any vessel so fitted to be classified in the category of aircraft-carriers.<sup>81</sup>

Thus, it appears that the determining factor as far as the Convention is concerned is whether the *Kiev* was "designed or adapted primarily to carry and operate aircraft at sea."

*Is the Kiev Designed Primarily to Carry and Operate Aircraft at Sea?*

In determining whether the *Kiev* is an aircraft carrier within the meaning of the Montreux Convention, it is instructive to consider

---

June 5, 1976, at 1, col. 4; *id.* July 19, 1976, at 5, col. 1; Washington Post, July 19, 1976, § A, at 16, col. 1.

80. Interview with Captain John E. Moore (Royal Navy, ret.) by Alan Jarvis, *Navy Times* Associate Editor, in *NAVY TIMES*, Sept. 20, 1976, at 4.

81. Montreux Convention, *supra* note 5, annex II, pt. B(2). The French official text reads:

Les bâtiments porte-aéronefs sont des bâtiments de guerre de surface qui, quel que soit leur déplacement, sont conçus ou aménagés principalement pour transporter et mettre en action des aéronefs en mer. Si un bâtiment de guerre n'a pas été conçu ou aménagé principalement pour transporter et mettre en action des aéronefs en mer, l'installation sur ce bâtiment d'un pont d'atterrissage ou d'envol n'aura pas pour effet de le faire entrer dans la classe des bâtiments porte-aéronefs.

the opinions of knowledgeable observers, the similarities between the *Kiev's* mission capabilities and those of Western aircraft carriers, and the evolution of the *Kiev's* design.

#### What Observers Say About the *Kiev*

The Soviet Navy has designated the *Kiev* a *Protivolodochny Kreyser*, meaning antisubmarine cruiser.<sup>82</sup> *Jane's* calls this "an interesting designation for a ship of this size, suggesting a bias towards [antisubmarine warfare] . . . but more probably aimed at circumventing the restrictions on aircraft carriers in the Montreux Convention . . . ."<sup>83</sup> *Jane's* classifies the *Kiev* as an aircraft carrier.<sup>84</sup> In March 1972, while the *Kiev* was being constructed, Admiral Elmo Zumwalt, then Chief of Naval Operations, told the United States Congress that, according to reconnaissance satellite photos, the ship "looks and feels like an aircraft carrier."<sup>85</sup> Admiral James L. Holloway, III, present Chief of Naval Operations, more recently compared the *Kiev's* size to that of the United States World War II *Essex*-class aircraft carriers.<sup>86</sup> Shortly after the *Kiev's* transit, Mr. Hattersby, British Minister of State for the Foreign and Commonwealth Office in the House of Commons, expressed little doubt that the *Kiev* meets the Convention's definition of aircraft carriers.<sup>87</sup>

#### The *Kiev's* Mission Capabilities

A Soviet Naval Captain of First Rank who is also a Candidate of Juridical Science has deplored the recent attempts of some foreign authors "to claim that antisubmarine cruisers built in the U.S.S.R. are aircraft carriers, by attributing uncharacteristic func-

---

82. *JANE's*, *supra* note 2, at 551.

83. *Id.*

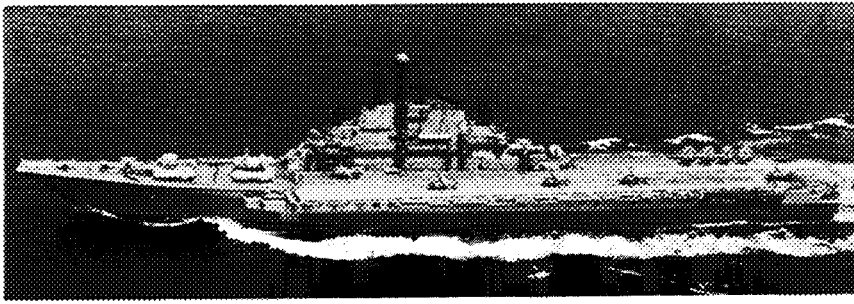
84. *Id.* at 105 & 551. See Figures 2 & 3. *Jane's*, however, "classifies a ship most similar to the *KIEV*, the *INVINCIBLE*, presently under construction for the Royal Navy and possessing facilities for vertical take-off aircraft, as an anti-submarine cruiser." Letter from Mr. Ugur Ziyal, First Secretary, Turkish Embassy, to the author (Nov. 24, 1976) (on file in the office of the *San Diego Law Review*).

85. Quoted in Polmar, *The Soviet "Aircraft Carrier,"* U.S. NAVAL INST. PROC., May 1974, at 144, 158 [hereinafter cited as Polmar, "*Aircraft Carrier*"].

86. Address by Admiral James L. Holloway, III, Chief of Naval Operations, U.S. Naval Institute Annual Meeting, in San Diego, Cal. (Apr. 15, 1976), reprinted in UNITED STATES NAVAL INSTITUTE SPECIAL REPORT 5 (June 1976). See Figure 4. Twenty-three *Essex*-class aircraft carriers were built to displace 36,380 tons at full load, with an overall length of either 888 or 972 feet and a width of 196 feet. *JANE's*, *supra* note 2, at 436.

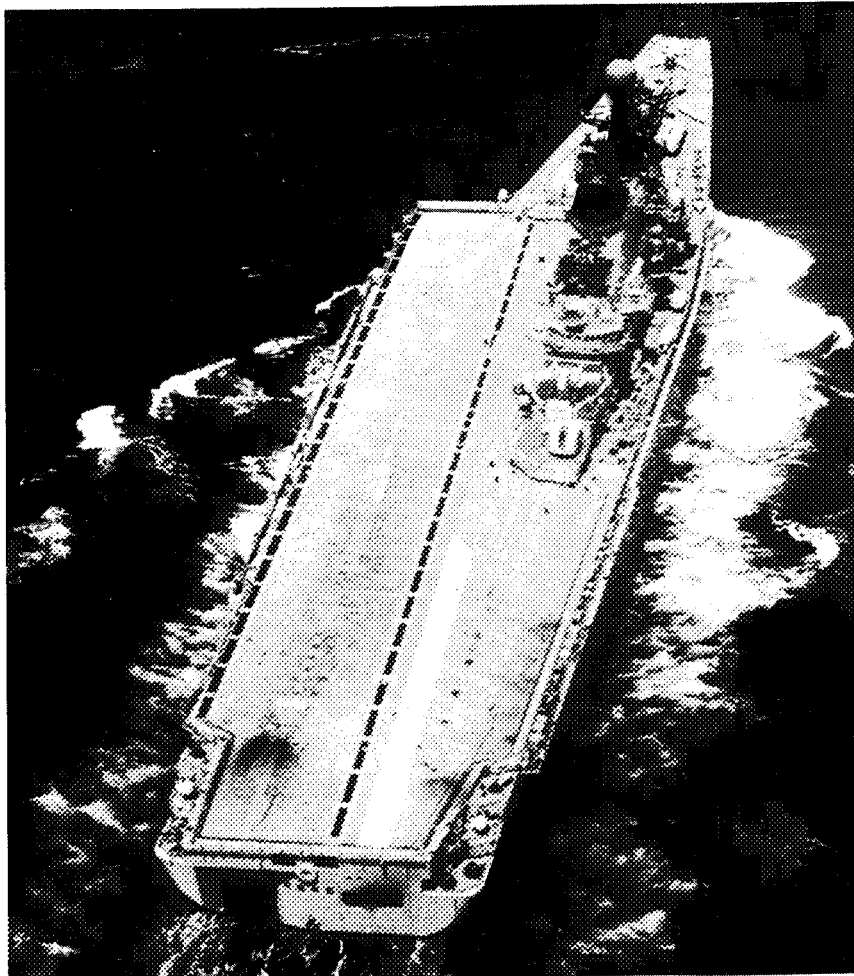
87. See note 108 *infra*.





**Figure 2**

Official U.S. Navy Photograph



**Figure 3**

Official U.S. Navy Photograph

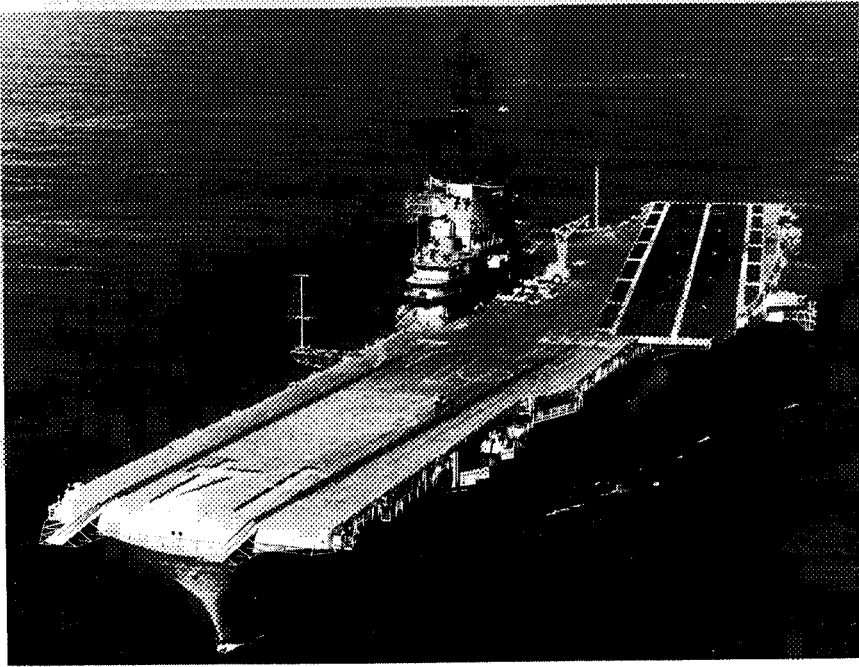


Figure 4

Official U.S. Navy Photograph

tions to them.”<sup>88</sup> Because a warship’s design and weaponry dictate the missions it can perform, analysis of these features should yield an objective assessment of its characteristic functions. Although the *Kiev* carries a heavier armament than do its Western counterparts, the missions the *Kiev* and its aircraft are capable of performing closely resemble those performed by Western aircraft carriers. In addition to its antisubmarine weapon systems,<sup>89</sup> the *Kiev* car-

88. He deplores the “groundlessness” of these allegations and summarily concludes without analysis: “As a thorough analysis of the Montreux Convention shows, one can consider from a legal point of view that passage through the Straits by any ships of States on the Black Sea does not contradict the letter and spirit of the Convention.” Serkov, *Pravovoy rezhim Chernomorskikh prolivov* (*The Legal Regime of the Black Sea Straits*), *MORSKOY SBORNIK* (NAVAL ANTHOLOGY), July 1976, at 83, 86.

89. Essentially the same as those of its forerunner, the *Moskva*, the *Kiev*’s antisubmarine weapons include two RBU-2500 A (or later) antisubmarine

ries a gun-missile armament the equal of any surface combatant now afloat.<sup>90</sup> This heavy offensive and defensive gun-missile armament differs from the United States' approach to carrier design and indicates that the *Kiev* will probably operate in high-threat areas where there is danger of carrier-based or land-based air attack.<sup>91</sup>

The *Kiev*'s most important weapons, however, are its aircraft, a mixture of some twenty-five Ka-25 "Hormone-A" helicopters<sup>92</sup> and twelve to fifteen Yak-36 VSTOL fighters.<sup>93</sup> These aircraft pro-

---

rocket launchers with a range of at least 5,500 yards, one twin-rail SUW-N-1 antisubmarine missile launcher with a range of 16 to 20 nautical miles, and probably two quintuple mounts of 21-inch torpedo tubes installed behind panels in the hull. Bow-mounted and variable depth sonars provide target inputs for these weapons. Polmar, *The Soviet Aircraft Carrier*, U.S. NAVAL INST. PROC., Oct. 1976, at 138-39 [hereinafter cited as Polmar, *Aircraft Carrier*]; Polmar, "Aircraft Carrier," *supra* note 85, at 154, 159. For additional information concerning Soviet antisubmarine weapons, see Polmar, *Thinking About Soviet ASW*, U.S. NAVAL INST. PROC., May 1976, at 108.

90. The *Kiev* mounts forward and aft twin 76 mm. rapid-fire guns for use against surface and air targets, forward and aft SA-N-3 twin-rail "Goblet" antiaircraft missile launchers, eight 23 mm. Gatling guns probably for close-in antiship missile defense, eight SS-N-12-type cruise missile launchers for use against surface targets up to 550 miles distant, and two retractable SA-N-4 twin-rail short-range defensive missile launchers. In addition, it carries a variety of radars to control the firing of these weapons. Polmar, *Aircraft Carrier*, *supra* note 89, at 138-39; AV. WEEK & SPACE TECH., Aug. 2, 1976, at 17.

91. Polmar, *Aircraft Carrier*, *supra* note 89, at 139.

92. The Ka-25, designated "Hormone-A" by NATO, is a twin-rotor, turbine-powered craft fitted for submarine detection and attack. A few of the "Hormone-B" type may be embarked, however, to provide long-range detection and targeting for the SS-N-12 antiship missiles which the *Kiev* carries. *Id.* at 140. See Figure 2 for an on-deck view of the Ka-25.

93. The Yakovlev-36 is a single seat VSTOL (vertical/short takeoff and landing) fighter-type aircraft with two turbojet engines which exhaust through vector-thrust nozzles for vertical flight. Fifty feet long, 17 feet high, with a wingspan of 23 feet, the high subsonic Yak-36 is a second generation VSTOL aircraft developed from the "Freehand," displayed at the Paris air show in 1967. The aircraft, which has two pylons for stores under its inboard wing panels and two for electronic sensors outboard, is probably capable of employing a variety of weapons including machine guns, bombs, air-to-air missiles, and tactical air-to-surface missiles. It gives the Soviet Navy its first sea-based airborne defense and strike capability. Compare Polmar, *Aircraft Carrier*, *supra* note 89, at 139-40, with Soviet Navy V/STOL Aircraft (information sheet supplied by Congressman Bob Wilson on Oct. 27, 1976, on file in the office of the *San Diego Law Review*), and AV. WEEK & SPACE TECH., Aug. 2, 1976, at 14. For a photograph of the Yak-36 in take-off and landing configuration, see Figure 5. For additional photographs, see AV. WEEK & SPACE TECH., Aug. 16, 1976, at 20. The NATO designation for the *Kiev*'s VSTOL aircraft is "Forger." Statement of Rear Admiral Donald P. Harvey, Director of Naval Intelligence, concerning the Soviet Naval Threat, before the House Armed Services Comm. (Feb. 4, 1977), at 10, to be reprinted in *Hearings Before the House Armed Services Comm.*, 95th Cong., 1st Sess. (1977).

vide the *Kiev* with increased flexibility to perform a variety of defensive and offensive missions traditionally performed by Western aircraft carriers including fleet air defense, antisubmarine warfare, long-range reconnaissance, electronic intelligence gathering, interception of subsonic aircraft, close air support, and attack on surface targets—both at sea and ashore.<sup>94</sup> Thus, antisubmarine warfare appears to be but one of many missions the *Kiev* and its aircraft can perform.<sup>95</sup> Indeed, it is the *Kiev*'s offensive power-projection capability—a role traditionally associated with aircraft carriers—not its defensive antisubmarine warfare role, that most concerns Western observers. William Middendorf, Secretary of the Navy, views the *Kiev*'s tactical air support capabilities for projection of power ashore as an "ominous trend for the near future."<sup>96</sup>

### The *Kiev*'s Design

The *Kiev*'s size and design clearly indicate that it is intended to function primarily as an aircraft carrier. Built at Nikolayev<sup>97</sup> in the Black Sea, the *Kiev* is the largest warship ever completed in the Soviet Union.<sup>98</sup> Nine hundred twenty-five feet long, 200 feet wide, with an angled flight deck of 550 to 600 feet, it displaces some 40,000 tons<sup>99</sup> and carries a complement of at least twenty-five helicopters and twelve VSTOL fighters.<sup>100</sup>

---

94. Compare Polmar, "Aircraft Carrier," *supra* note 85, at 160, with Soviet Navy V/STOL Aircraft, *supra* note 93, and Polmar, *Aircraft Carrier*, *supra* note 89, at 140. Some observers have even suggested an amphibious support capability. Interview, *supra* note 80; N.Y. Times, July 22, 1976, at 5, col. 1.

95. Polmar, *Aircraft Carrier*, *supra* note 89, at 140.

96. Quoted in Prina, *supra* note 79, at 11. For an excellent analysis of the various roles the *Kiev* can perform, see Hynes, *The Role of the Kiev in Soviet Naval Operations*, NAVAL WAR C. REV., fall 1976, at 38. Rear Admiral Harvey stresses "the combat capabilities of the individual units and the ability of those units to fulfill their missions" as more important than relative numbers of particular ship-types in calculating the naval balance. Statement, *supra* note 93, at 2.

97. In Black Sea Shipyard No. 444, formerly the Nosenko Yard at Nikolayev, northeast of the Black Sea port of Odessa. Polmar, *Aircraft Carrier*, *supra* note 89, at 141.

98. Initial Western press reports of its construction, based on "the latest U.S. reconnaissance satellite photos," appeared in January 1972, and indicated a ship some 800 feet in length was being built. Polmar, "Aircraft Carrier," *supra* note 85, at 158.

99. JANE'S, *supra* note 2, at 551.

100. Compare AV. WEEK & SPACE TECH., Aug. 2, 1976, at 14, with *id.*, Aug.

*Kiev's* forerunners, two 15,000-ton, helicopter-carrying "antisubmarine cruisers," the *Moskva* and the *Leningrad*, were built in the same shipyard at Nikolayev.<sup>101</sup> *Kiev's* plans must already have been on the drawing board when these ships were launched in 1967 and 1968,<sup>102</sup> but its construction did not begin until 1969 or 1970, at least a year after *Moskva's* initial six-month deployment in the Mediterranean.<sup>103</sup> *Kiev* was launched in December 1972,<sup>104</sup> and began sea trials in the Black Sea in 1975.<sup>105</sup>

Although the *Kiev's* cruiser-like superstructure resembles that of its forerunners, its angled deck and great weight depart signifi-

---

9, 1976, at 26. Some observers estimate a larger aircraft-carrying capacity—from 25 helicopters and 25 fixed-wing aircraft to 35 VSTOL aircraft and 30 to 35 helicopters. See, e.g., JANE'S, *supra* note 2, at 551; Polmar, "Aircraft Carrier," *supra* note 85, at 159. For additional photographs, see *Kiev-latest photos reveal [sic] new Russian V/STOL airdraft [sic]*, 4 INT'L DEFENSE REV. 537 (1976).

101. Polmar, *Aircraft Carrier*, *supra* note 89, at 141.

102. JANE'S, *supra* note 2, at 551.

103. Polmar, "Aircraft Carrier," *supra* note 85, at 158. Because the *Moskva* and the *Leningrad* were designed primarily for the purpose of operating helicopters at sea, their compatibility with the terms of the Convention could be supported by two arguments: either helicopters are not "aircraft" within the meaning of the Convention, or the helicopter is a technological development not contemplated by the drafters and therefore not covered by the Convention. Because the Convention does not define *aircraft*, these contentions may resolve to the same argument.

104. *Id.*

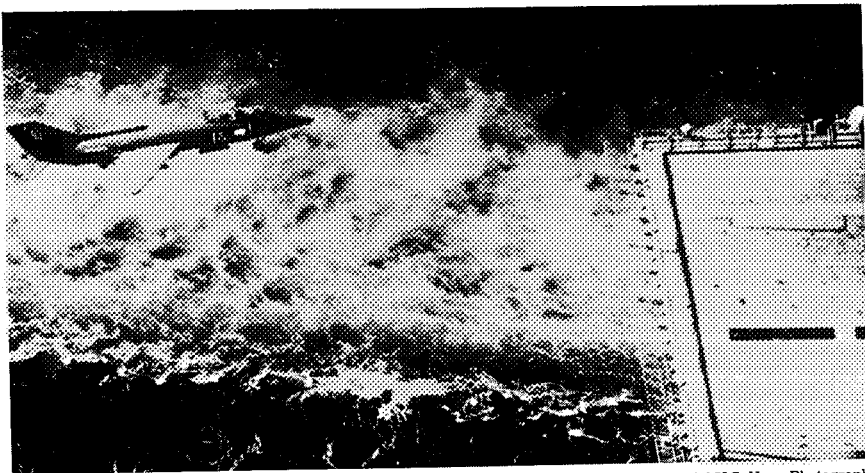
105. Its sister ship *Minsk*, built in the same dock and launched in 1975, was expected to begin sea trials in June 1976. Manthorpe, *The Soviet Navy in 1975*, U.S. NAVAL INST. PROC., May 1976, at 205; Address by Admiral Holmoway, *supra* note 86. Construction is already well along at Nikolayev on a third ship of this class. *Id.* To avoid confusion, this class, technically called the *Kuril*-class, will be referred to throughout this Comment as the *Kiev*-class.

Western analysts appear to be in agreement that the *Kiev* is but the first of a series of Soviet "aircraft carriers." . . .

It appears likely that the yard at Nikolayev could produce a *Kiev*-class carrier on a regular basis at perhaps three- or four-year intervals. The Zhdanov or Baltic shipyard at Leningrad also could build carriers at the same rate if proper priorities were made. Reports persist that the Soviets plan to build six or eight of the *Kiev*-class carriers, a program that could permit one ship to be continuously deployed in the Indian Ocean and one in the Mediterranean. With a shipyard in Leningrad as well as that at Nikolayev building the ships, the Soviets could conceivably have as many as four carriers at sea by the early 1980's.

Polmar, "Aircraft Carrier," *supra* note 85, at 160. Indeed, reports indicate that four such ships are currently under construction, at least one of which is being built in the Leningrad region. Compare AV. WEEK & SPACE TECH., Aug. 9, 1976, at 26, with Washington Post, July 19, 1976, § A, at 16, col. 1. "The arrival of these ships has been heralded by Admiral Gorshkov's support for embarked tactical air as a necessity for navies employed in extending political influence far abroad, and by a softening of previous Soviet criticisms of this class of ship." JANE'S FIGHTING SHIPS 1976-77, at 688 (J. Moore ed. 1976).

cantly from the *Moskva*-class design and indicate an unequivocal commitment to aircraft launching and landing as a primary function. It would be economically wasteful and politically unrealistic to build such a large warship without intending to utilize its full capabilities.<sup>106</sup> Without its aircraft, the *Kiev* is little better than a 6,000-ton guided missile cruiser. With helicopters only, it slightly exceeds the capabilities of the 15,000-ton *Moskva*. Only as an operating platform for VSTOL fixed-wing aircraft can the 40,000-ton *Kiev*'s great expense be justified. Pleading a primary antisubmarine mission is really irrelevant to the question of whether the *Kiev* is an aircraft carrier, for the drafters of the Montreux Convention were less concerned about specific ship missions than about ship configurations: Witness the detailed weight limits and gun sizes they adopted.<sup>107</sup>



Official U.S. Navy Photograph

Figure 5

On the basis of the opinions of knowledgeable observers and of analysis of the *Kiev*'s weapons and its design, there is no way to avoid the conclusion that the *Kiev* was designed and constructed

106. Cf. Letter from Mr. Ugur Ziyal, First Secretary, Turkish Embassy, *supra* note 84: "Ever since construction of the KIEV was undertaken at the Soviet dockyards of Nikolayev, it was obvious that the vessel was not meant to be confined to the Black Sea . . ."

107. See Montreux Convention, *supra* note 5, annex II.

primarily to carry and operate aircraft at sea, its other mission capabilities notwithstanding. Indeed, the conclusion is inescapable that the *Kiev* is an aircraft carrier within the meaning of the Montreux Convention.<sup>108</sup>

*Does the Montreux Convention Prohibit Transit of Aircraft Carriers?*

One commentator has suggested that because the Convention does not specifically bar transit of aircraft carriers, "they are permitted within the constraints of the . . . articles which place tonnage limits on [warships of] non-Black Sea Powers."<sup>109</sup>

While the Convention permits free passage for certain categories of warships,<sup>110</sup> it effectively prohibits transit of all warships exceeding 10,000 tons,<sup>111</sup> except for capital ships of Black Sea powers.<sup>112</sup> Capital ships, as defined in Annex II, are surface vessels of war belonging to either of the following subcategories:

(a) Surface vessels of war, *other than aircraft-carriers*, auxiliary vessels, or capital ships of subcategory (b), the standard displacement of which exceeds 10,000 tons (10,160 metric tons) or which carry a gun with a calibre exceeding 8 in. (203 mm.);

(b) Surface vessels of war, *other than aircraft-carriers*, the standard displacement of which does not exceed [sic] 8,000 tons (8,128 metric tons) and which carry a gun with a calibre exceeding 8 in. (203 mm.)<sup>113</sup>

These words clearly exclude aircraft carriers from the category of capital ships. Did the drafters also intend to exclude aircraft carriers from the other categories of ships allowed free transit, thereby completely barring their passage through the Straits?

---

108. Although the British government refrained from lodging a formal objection to the *Kiev's* transit, Mr. Hattersby, its Minister of State for the Foreign and Commonwealth Office in the House of Commons, stated:

The "*Kiev*" does not fit neatly into any of the classes of ships defined by the Convention. There is little doubt, however, that it meets the definition of aircraft carriers annexed to the Convention, which refers to ships designed or adapted primarily for the purpose of carrying and operating aircraft at sea.

916 PARL. DEB., H.C. (5th ser.) 7-8 (July 26, 1976).

109. Lewis, Point Paper: The Montreaux [sic] Convention and Soviet Aircraft Carriers, July 30, 1974, at 2 (on file in the office of the *San Diego Law Review*).

110. Montreux Convention, *supra* note 5, art. 10. See notes 52-54 *supra*.

111. Compare Montreux Convention, *supra* note 5, art. 14, with *id.* annex II, pt. B(3).

112. *Id.* art. 11. See text accompanying notes 51-63 *supra*.

113. Montreux Convention, *supra* note 5, annex II, pt. B(1) (emphasis added).

Other language in the Convention and its Annexes may supply the answer. Article 15, which states, "Vessels of war in transit through the Straits shall in no circumstances make use of any aircraft which they may be carrying,"<sup>114</sup> implies that the drafters intended to allow at least some ships carrying aircraft to transit the Straits. Consistent with this view is the language of Annex II:

The fitting of a landing-on or flying-off deck on any vessel of war, provided such vessel has not been designed or adapted primarily for the purpose of carrying and operating aircraft at sea, shall not cause any vessel so fitted to be classified in the category of aircraft-carriers.<sup>115</sup>

From these two provisions one may reasonably conclude that the Convention's drafters intended not to prohibit transit of those warships which may have been designed or modified to carry a small number of aircraft for missions incidental to the ship's primary function. A provision restricting auxiliary vessels to no more than two aircraft-launching apparatuses further supports this conclusion.<sup>116</sup>

While Annex II expressly excludes aircraft carriers from the categories of capital ships and light surface vessels,<sup>117</sup> it excludes them by implication from the categories of submarines and minor war vessels.<sup>118</sup> Auxiliary vessels, however, apparently may be designed or adapted to carry aircraft, but not to operate them at sea.<sup>119</sup> Annex II also distinguishes between two subcategories of aircraft carriers:

- (a) Vessels fitted with a flight deck, from which aircraft can take off, or on which aircraft can land from the air;
- (b) Vessels not fitted with a flight deck as described in (a) above.<sup>120</sup>

---

114. *Id.* art. 15. The French Official Text reads: "Les bâtiments de guerre en transit dans les Détroits ne pourront, en aucun cas, utiliser les aéronefs dont ils seraient porteurs."

115. *Id.* annex II pt. B(2). For French Official Text, see note 81 *supra*.

116. Montreux Convention, *supra* note 5, annex II, pt. B(6) (g).

117. See *id.* pts. B(1), B(3).

118. See *id.* pts. B(4), B(5).

119. See *id.* pt. B(6) (f).

120. *Id.* pt. B(2) (a)-(b). Aircraft carriers without flight decks, although extinct today, figured prominently in the early history of Russian naval aviation. During World War I, two large cargo liners and several smaller merchant vessels were converted to seaplane carriers. The larger "hydro



Comparing auxiliary vessels with subcategory (b) aircraft carriers emphasizes the drafters' intention to focus on the operation rather than on the transportation of aircraft. Hence, vessels configured primarily to carry *and operate* aircraft at sea, whether or not fitted with flight decks, are excluded, while auxiliary vessels designed primarily to carry aircraft, but not to operate them at sea, may transit freely.

A comparison between the repeated references to aircraft carriers in Annex II and the absence of any affirmative provision for their transit in the Convention's text—in contrast to the express inclusion of aircraft carriers in the Lausanne text—strongly suggests that the parties considered the question of aircraft carriers and that they consciously chose to exclude them from among those classes of warships to which they desired to accord free transit of the Straits.

The Convention represents a compromise of the extreme positions of the parties.<sup>121</sup> Because it imposes limitations on transit unknown under the Lausanne regime upon Black Sea and non-Black Sea powers alike,<sup>122</sup> it is reasonable to conclude that both Black Sea and non-Black Sea powers had to make certain concessions. While the Soviet Union desired unlimited transit rights through the Straits for its own warships, it was eager to prevent all foreign warships, particularly aircraft carriers, from entering the Black Sea.<sup>123</sup> The United States, Britain, France, and Japan had large carrier fleets.<sup>124</sup> But in 1936, the Soviet Union had no aircraft carriers and no immediate plans to build any.<sup>125</sup> Under these conditions, a "concession" denying transit to aircraft carriers of Black Sea powers in return for a like concession from non-Black Sea powers seems a small price to pay for a great benefit. Thus, both the wording of the Convention and the practicalities of the

---

[plane] cruisers" carried up to eight Curtiss flying boats each and saw action in both the Baltic and the Black Sea.

Unlike some of their contemporaries in the Royal Navy, none of the Russian ships had flight decks from which seaplanes could "roll off" with the aid of trolley wheels. Rather, the Russian seaplanes were hoisted over the side of the ship and made a takeoff from the water. "Landings" were also made on the water, with the aircraft being hoisted aboard by crane.

Polmar, "Aircraft Carrier," *supra* note 85, at 147. See generally Layman & Drashpil, *Early Russian Shipboard Aviation*, U.S. NAVAL INST. PROC., Apr. 1971, at 56.

121. See text accompanying note 50 *supra*.

122. Note, *supra* note 42, at 188.

123. See authorities cited notes 49 & 50 *supra*.

124. See Polmar, "Aircraft Carrier," *supra* note 85, at 147.

125. See *id.* at 147-48.

Soviet bargaining position strongly support the view that the Montreux Convention prohibits transit of aircraft carriers.<sup>126</sup>

#### THE FUTURE OF THE MONTREUX CONVENTION

If logical analysis indicates that the *Kiev's* transit breached the Montreux Convention, how does this comport with the uniform views of the signatories that the Convention was not violated? Does the Convention prescribe a logical or a political standard of measurement? Can the words "designed . . . primarily for the purpose of carrying and operating aircraft at sea" mean one thing logically and another politically? Or do they have only one common-sense meaning—a meaning which establishes a standard that must be enforced if the Montreux Convention is to have any continuing validity? How far can the meanings of such words be stretched until they no longer encompass their original concepts? A respected authority on treaty interpretation has observed:

The first rule of hermeneutics, legal or otherwise, is that interpretation means finding in good faith that meaning of certain words, if they are doubtful, which those who used the words must have desired to convey, according to the usage of speech . . . , the existing laws, common sense, and the general intent of that whole of which the doubted passage forms a part; and does not mean what ingenuity may apparently succeed in forcing into a passage.<sup>127</sup>

Turkey's willingness or its reluctance to frustrate Soviet ingenuity by adhering to such a commonsense standard of interpretation in administering the Straits will largely determine the future of the Montreux Convention.

#### *De Facto Versus De Jure Violation*

The *Kiev's* transit constituted a *de facto* rather than a *de jure* violation of the Montreux Convention.<sup>128</sup> As a matter of labels, the Convention was not violated; in reality, it was. Such a

126. Consistent with this interpretation, in 1939 the Soviet Union reportedly laid the keel for its first aircraft carrier at Leningrad, rather than in a Black Sea shipyard. *Id.* at 149.

127. *Barron v. United States*, 2 MS. Op. 63 (1871) (Lieber, Umpire), quoted in 3 J.B. MOORE, HISTORY AND DIGEST OF INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY 2522 (1898).

128. Cf. Bilsel, *International Law*, *supra* note 18, at 550, citing the divergence between the Straits regime and state practice prior to the signing of the Lausanne Treaty.

dichotomy between practice and reality in enforcing Convention provisions could lead to further flaunting of the Convention's provisions and to a general weakening of the Straits regime.

Turkey accepted the Soviet designation of *antisubmarine cruiser* without objection from the other signatories even though many Western officials and observers believed a breach had occurred.<sup>129</sup> With additional *Kiev*-class carriers being built in the Black Sea, notice of transit for other "antisubmarine cruisers" will be forthcoming. Turkey must then decide whether to reassess the *Kiev*-class cruisers in light of further observation—considering particularly their design and the fighter aircraft they carry—and deny them further transit or to ignore the clear language of the Convention and bow to Soviet verbal mastery and "naked-power politics."<sup>130</sup> The Turkish desire to preserve the Convention<sup>131</sup> while maintaining a low profile between the super powers<sup>132</sup> favors granting passage to *Kiev*-class vessels. However, the language of the Convention suggests that an "interpretation" allowing such transit would constitute an ultra vires exercise of discretion.<sup>133</sup> The choices confronting Turkey appear equally unappealing. Permitting the *Kiev* to transit offends the Convention's language; denying transit risks Soviet denunciation of the Convention. Either result would further weaken the present Straits Regime.

### *Soviet Expansionism in the Mediterranean*

Russia and the Soviet Union have always coveted the Turkish Straits. Tsar Alexander I complained that the Turk held the keys

---

129. Buzan, *The Status and Future of the Montreux Convention*, 17 SURVIVAL 242, 246 (1976); see authorities cited note 79 *supra*.

130. VÁLI, STRAITS, *supra* note 10, at 138.

131. See Letter from Mr. Ugur Ziyal, First Secretary, Turkish Embassy, *supra* note 84:

[T]he fundamental principles of the Montreux Convention . . . are to preserve, in the Black Sea, the security of Turkey and the riparian Black Sea countries as well as securing passage in transit as foreseen in the . . . Convention.

The Convention still retains its characteristic of being the best instrument for the realization of these principles, while maintaining at the same time an ideal order between them.

132. Buzan, *supra* note 129, at 246.

133. Article 24 transfers the functions of the International Commission under the Lausanne Treaty to the Turkish government, providing that it "will supervise the execution of all the provisions of the present Convention relating to the passage of vessels of war through the Straits." Articles 8 through 18 spell out in detail the rights of transit in peacetime. Article 19 specifies rights of transit in time of war, if Turkey is not a belligerent. Only in Articles 20 (time of war, Turkey being a belligerent) and 21 (imminent danger of war) does the Convention accord the Turkish government discretion to decide which warships will pass.

to his house. He expressed the classic Russian position when he declared to Napoleon's ambassador: "Geography wills that I have [Constantinople], because if it goes to another I would no longer be master of my house. . . . [I]t is indispensable that I possess what geography assigns me."<sup>134</sup>

During World War I, Russia nearly gained its objective by agreeing with Britain, France, and Italy to Russia's annexation of the Turkish Straits, only to lose them when the revolution forced Russia's withdrawal from the war.<sup>135</sup> Both at Lausanne and Montreux the new Soviet government endeavored to bar foreign warships from the Black Sea while attempting to gain unlimited transit rights for its own fleet.<sup>136</sup> Stalin, complaining "Turkey's hand holds our throat," tried after World War II to gain Soviet bases in the Straits and joint control, with other Black Sea powers, over the regime of the Straits.<sup>137</sup>

These vital Straits have become even more important with the dramatic rise of the Soviet Mediterranean fleet since 1963 and the expansion of Soviet political influence in the Middle East.<sup>138</sup> The recent loss of Soviet air bases in Egypt, leaving the Mediterranean fleet without air cover, highlights the Soviet government's need to assure passage of aircraft-carrying vessels through the Turkish Straits.<sup>139</sup> Under the Montreux Convention such assurance is

134. V. PUREYEAR, *NAPOLEON AND THE DARDANELLES* 326 (1951).

135. VÁLI, *STRAITS*, *supra* note 10, at 28-29.

136. See authorities cited note 49 *supra*. In 1935, Ambassador Skinner wrote to the Secretary of State:

The Russians, after all, do not change. In the days of the Tsar their eyes were constantly fixed upon Constantinople. The new Tsar, Stalin, works in a different way. He makes a military alliance with Turkey; he becomes indispensable to Turkey . . . ; he encourages the fortification of the Straits; he endows Turkey with certain industries; he obtains a privileged position, generally, in this country. How far will this movement proceed, and what would happen if the strong and able leader of Turkey today should disappear as some time he must, leaving the Government in the hands of men of untested ability . . . ? In such circumstances would not Russia command the situation?

Letter from the Ambassador in Turkey to the Secretary of State (May 29, 1935), *reprinted in* [1935] 1 FOREIGN REL. U.S. 1029, 1030 (1953).

137. VÁLI, *supra* note 38, at 182; VÁLI, *STRAITS*, *supra* note 10, at 231. See also authorities cited note 77 *supra*.

138. VÁLI, *STRAITS*, *supra* note 10, at 113-29.

139. See Washington Post, July 19, 1976, § A, at 16, col. 1. On Soviet difficulties in obtaining military facilities in the Mediterranean, see VÁLI,

shaky at best. Thus, the Soviet Union will probably attempt by direct or indirect means, to secure a more certain right of transit, particularly for its *Kiev*-class ships. "[A]s long as Soviet leaders, like the Tsars before them, continue to want to reach out in force into the Mediterranean and the other warm seas beyond, the life-line for such endeavors, the Straits, will remain a prize to be captured."<sup>140</sup>

### *Options to Revise the Convention*

Feneric Váli in his insightful work, *The Turkish Straits and NATO*, reviews the options available for altering the Regime of the Turkish Straits: amendment, denunciation, and use of force.<sup>141</sup> His approach from the Soviet viewpoint reflects his perception of the Soviet government as the one most desirous of altering the Convention's terms.

### *Options for Peaceful Change*

The two options for peaceful change that Váli identifies—amendment and denunciation—arise from the terms of the Convention.<sup>142</sup> Because of its cumbersome time restraints and the requirement of a unanimous vote,<sup>143</sup> the Soviet Union would probably avoid the amendment procedure. However, a denunciation

---

STRAITS, *supra* note 10, at 114-15. But see Polmar, *Aircraft Carrier*, *supra* note 89, at 138, who notes that the *Kiev*, which could overcome the Soviet Navy's historic shortage of overseas airbases, appears when the number of bases available to the Soviet Union is increasing, "and now apparently includes runways in Cuba, Guinea, Iraq, South Yemen, and Somalia, and possibly Angola, Libya, and Syria as well."

140. VÁLI, STRAITS, *supra* note 10, at 163. For an analysis of current Soviet naval strategy, see Ra'anani, *The Soviet View of Navies in Peacetime*, NAVAL WAR C. REV., summer 1976, at 30. For a Soviet view of current naval warfare tactics compatible with the development of seaborne aircraft launching platforms, see Gorshkov, *The Development of the Art of Naval Warfare*, U.S. NAVAL INST. PROC., June 1975, at 54, reprinted from *Morskoy Sbornik*, Dec. 1974. See also Gorshkov, *Navies in War and Peace* (pt. 11), U.S. NAVAL INST. PROC., Nov. 1974, at 54; Turner, *Commentary*, *id.* at 67; Statement of Rear Admiral Harvey, *supra* note 93, at 3-8.

141. VÁLI, STRAITS, *supra* note 10, at 136-63. For a thorough analysis of Soviet respect for treaties and other forms of international law, see J. TRISKA & R. SLUSSER, *THE THEORY, LAW, AND POLICY OF SOVIET TREATIES* (1962); Triska & Slusser, *Treaties and Other Sources of Order in International Relations: The Soviet View*, 52 AM. J. INT'L L. 699 (1958). See also Esgain, *Position of the United States and the Soviet Union on Treaty Law and Treaty Negotiations*, 46 MIL. L. REV. 31 (1969). Analysis of Váli's proposed options is suggested in Knight, *The Kiev and the Turkish Straits*, 71 AM. J. INT'L L. 125, 129 (1977).

142. Montreux Convention, *supra* note 5, art. 28, paras. 3 & 4 (denunciation); *id.* art. 29 (amendment).

143. See VÁLI, STRAITS, *supra* note 10, at 140.

may be made at any time and would result in a general conference to revise or replace the Montreux Convention.<sup>144</sup> Although such a conference probably would not alter the perpetual principle of freedom of navigation and transit by sea through the Straits, it could nonetheless change the application of that principle by either expanding or contracting the transit rights of warships. With the exception of Japan,<sup>145</sup> parties to this conference would probably include the Montreux signatories, most Mediterranean nations, and the United States.

Most important among the issues this conference should address are whether to continue to govern the Straits regime by an international convention, whether to depart from the balance of interests struck at Montreux, and whether to update the Convention technologically to provide for new ship-types and weapon systems, such as missile-launchers, nuclear warheads, and helicopters.<sup>146</sup> While Soviet interests lie in dealing with Turkey individually and in securing more favorable transit rights for Soviet warships,<sup>147</sup> Western interests lie in maintaining the status quo. However, all nations could conceivably profit from the certainty that a technologically updated convention would afford.<sup>148</sup>

Váli suggests that although it seems desirable to maintain the general prohibition on the passage of submarines, "concessions may be made to the Russians in regard to aircraft carriers . . ."<sup>149</sup> Barring such outright concessions in the terms of the treaty, the Soviets could nevertheless achieve a practical concession for its *Kiev*-class vessels by insisting on a modern warship-classification scheme which would include these ships in the definition of a class of vessels eligible to transit the Straits. More probably,

---

144. *Id.* at 139. But compare *id.* at 139-40, with Montreux Convention, *supra* note 5, art. 28, para. 4, and *id.* art. 29, para. 4.

145. Japan has been excluded by the San Francisco Peace Treaty of 1950. VÁLI, STRAITS, *supra* note 10, at 139.

146. For a discussion of these and other issues, see *id.* at 144-46.

147. See *id.* at 144 n.d.

148. In 1968, the Soviet Union protested the passage of two American destroyers on the grounds that the destroyers' antisubmarine rocket-launchers constituted guns larger than eight inches under the Convention. *Id.* at 102-04. Technologically updating the Convention would avoid such problems.

149. *Id.* at 145. For criticism of this position, see text accompanying notes 161-65 *infra*.

however, neither side would gain significant concessions, and the conference would deadlock.

Should this conference fail to agree on a new regime, several results could follow. Turkey may contend that the regime of the Straits for the denouncing parties reverts to the "ancient rule of the Ottoman empire," which was replaced by both the Lausanne Treaty and the Montreux Convention only with Turkish consent.<sup>150</sup> The weakness of this argument lies in its failure to account for the development of customary international law. Fifty years of universally accepted free transit and navigation of the Straits, albeit with certain numerical restrictions placed on warships, probably is sufficient to establish a customary law of the Straits parallel to, but independent of, the Lausanne and Montreux agreements.<sup>151</sup> For this reason, Turkey would probably continue to apply the Montreux Convention to the warships of the denouncing parties, just as it now does to non-signatories.<sup>152</sup> Soviet compliance with the Lausanne regime despite its failure to ratify the Lausanne Treaty<sup>153</sup> provides some precedent for this view. Yet, a denunciation culminating in precisely the same result that obtained before the denunciation seems little more than an exercise in futility. Nothing could be gained by it.

The Soviet Union, in Váli's view, is likely to claim that upon its denunciation the convention would lapse for all parties and that the Straits would then be open on the same basis as are all other international straits.<sup>154</sup> But the strong United States and NATO resistance which he suggests to a change in this direction may not be necessary, for the disadvantage to the Soviets of this course of action is patent. Soviet warships may gain an unlimited right of free transit, but at the same time foreign warships could enter the Black Sea without limit. Surely no serious Soviet proposal would condone such an intrusion.<sup>155</sup> An additional impediment arises from the fact that the Turkish Straits have always enjoyed a special regime; hence the Soviet position would contravene customary international law.<sup>156</sup>

---

150. VÁLI, STRAITS, *supra* note 10, at 141.

151. See text accompanying note 41 *supra*.

152. Compare VÁLI, STRAITS, *supra* note 10, at 141 n.c., with Telegram from the Chargé in Turkey to the Secretary of State (June 26, 1936), reprinted in [1936] 3 FOREIGN REL. U.S. 523 (1953).

153. See, e.g., VÁLI, STRAITS, *supra* note 10, at 35.

154. *Id.* at 142.

155. See authorities cited note 49 *supra* and text accompanying note 136 *supra*.

156. See text accompanying notes 32-34 *supra*.

A comparison of Soviet options for peaceful change of the Straits Regime points to the conclusion that the only potentially fruitful course is that of denunciation followed by agreement on a new regime. Yet it is doubtful that even this course would yield any net gain, for the Western powers, and particularly the United States, are unlikely to bargain away any advantage the Montreux Convention now affords them.<sup>157</sup> Agreement in the face of diametrically opposed positions means compromise, but striking a compromise on a regime more favorable to either side than is the present one is doubtful at best. Therefore, the Soviets will probably resort to some other means to effect a change of the Straits Regime.

### Use of Force

The other alternative Váli proposes is the use of force of varying degrees short of war.<sup>158</sup> For example, the Soviets may attempt to gain more favorable treatment with regard to the Straits by persuading influential Turks that NATO is neither much interested in nor willing to defend Turkey and that the nation could only benefit by abandoning NATO in favor of an alliance with the Soviet Union.<sup>159</sup> Whatever the nature of the Soviet campaign, it is likely to include the use of psychological force and deception. In this regard Váli makes an important observation: Moscow is more likely to proceed *step-by-step* toward its desired goal than to use a sudden, ultimatum-like thrust.<sup>160</sup> The difficulty in identifying such gradual efforts in time to oppose them is further com-

---

157. It is hoped that future negotiators will have learned from the naive American approach at Yalta and Potsdam which largely ignored the intricate legal-political balance established by the draftsmen of Montreux. The American note of November 2, 1945, accepted the Soviet proposals for unrestricted passage of its own warships through the Straits and for denial of the right of transit to warships of non-Black Sea powers. At Potsdam, a State Department briefing paper even recommended that the United States not object to the establishment of Russian bases in the Straits, if done "with the free consent of Turkey." VÁLI, STRAITS, *supra* note 10, at 143, 244-46.

158. *Id.* at 146.

159. State Department officials are concerned that the Turkish-Soviet "declaration of political principles," soon to be signed, may represent a "further erosion in Turkey's already tenuous association with [NATO]." L.A. Times, Nov. 13, 1976, pt. I, at 6, col. 1.

160. VÁLI, STRAITS, *supra* note 10, at 146. For recommended steps to oppose Soviet efforts, see *id.* at 147-51. For an example of Stalin's step-by-step approach to the Straits, see note 136 *supra*.



pounded by the veil of secrecy surrounding the Soviet decisionmaking process.

Thus, the course most likely for the Soviets to pursue in effecting a change in the Straits regime is a step-by-step process of reorienting Turkey toward the East. Because such a process must be long term, certain short-term measures aimed at more limited goals are probable. One such goal could be to find a way to gain transit through the Straits for aircraft carriers built in the ice-free Black Sea shipyards.

While Váli makes a penetrating analysis of the issues at stake in revising the Convention, his analysis falters with respect to aircraft carriers, for he fails to perceive the significance of the step-by-step process in securing passage for Soviet aircraft carriers built in the Black Sea. First, he implies erroneously that aircraft carriers of 10,000 tons or less may transit the Straits, presumably as light surface vessels; then he mentions a 15,000-ton limitation on Soviet carriers—positions which are not only contradictory but also wholly unwarranted by the wording of Annex II.<sup>161</sup> Furthermore, while he stresses the urgency of containing Soviet political expansion in the Middle East and the Mediterranean,<sup>162</sup> he singles out transit of Soviet aircraft carriers as one of those items the West should consider giving up in any future revision of the Montreux Convention.<sup>163</sup> This unfortunate remark must stem either from the belief that the Soviet Union had no aircraft carriers and was unlikely to build any,<sup>164</sup> from a conviction that any subsequent Soviet aircraft carriers would follow the same design as *Moskva* and *Leningrad*,<sup>165</sup> or from a total misconception of the importance of aircraft carriers in modern naval warfare as instruments of military and political power projection. Whatever Váli's reasons, analysis of the factors surrounding the *Kiev*'s construction points strongly in the direction of a well-planned effort to skirt the prohibition of the Montreux Convention.

#### *The Kiev as a Step in Avoidance of the Montreux Convention*

The 40,000-ton *Kiev* was built in the Black Sea. To build a 40,000-ton ship specifically designed to carry and operate aircraft

---

161. Compare VÁLI, STRAITS, *supra* note 10, at 46-47 n.h. & 145, with note 52 *supra* and text accompanying notes 110-13 *supra*.

162. E.g., VÁLI, STRAITS, *supra* note 10, at 146-63.

163. *Id.* at 145.

164. Váli appears to be unaware of the *Kiev*, the first news reports of which were released in January 1972, the same year *The Turkish Straits and NATO* was published.

165. Implied in VÁLI, STRAITS, *supra* note 10, at 46-47 n.h.

at sea and to perform a primary mission of antisubmarine warfare, then to restrict its operating zone to the Black Sea, into which the Montreux Convention prohibits entry of foreign submarines, would be the height of waste and folly. To build additional, identically-configured ships in the Black Sea shipyards would be utter madness—unless some way could be found to transport this fleet of large, aircraft-carrying, antisubmarine warships to bases outside the Black Sea.

But in order to exit the Black Sea, these ships must pass through the Turkish Straits, and the Montreux Convention restricts transit of ships larger than 15,000 tons to capital ships—that is, to battle-ships and cruisers—of Black Sea powers. For Soviet strategists, the solution must have been simple: Build a hybrid ship which has some of the characteristics of a capital ship but which can also carry and operate aircraft; then name it according to its surface warfare role and downplay its aircraft operating capability.

The ultimate model could be preceded by an intermediate design which could be useful in two respects: to prepare the way for acceptance of the ultimate design both at home and abroad and to operate as a test case by transiting the Turkish Straits. If no one objected to the transit, the way would be cleared for the advanced design. If objections were raised, a costly and probably futile construction effort could be avoided or shifted to a shipyard outside the Black Sea. It is significant in this regard that the *Moskva* and the *Leningrad*, two 15,000-ton, helicopter-carrying "antisubmarine cruisers," preceded the *Kiev* by four to five years.<sup>166</sup> Soviet planners were no doubt encouraged when both ships passed through the Straits virtually without protest.

In January 1972, the *Kiev*'s construction was reported in the Western press. The report was based upon a satellite photograph of a huge ship being built at the same shipyard which produced the *Moskva* and *Leningrad*. The concurrence of this construction with the abrupt end of the *Moskva*-class of antisubmarine cruisers suggests a plan to pave the way for calling an aircraft carrier a cruiser by first successfully designating a helicopter-carrier as a cruiser. These actions appear to be a part of a conscious, well-

---

166. The *Moskva* was launched in 1967; the *Leningrad*, in 1968. See text accompanying notes 101-05 *supra*.

planned effort to launch a fleet of aircraft carriers and send them through the Turkish Straits as cruisers.

### *American National Security Interests in the Straits*

The essence of the American interest in the Turkish Straits lies in its policy of containment. Napoleon perceived the supreme strategic value of the Straits for this purpose when he declared his willingness "to abandon mastery over half the world rather than yield Russia those narrow straits."<sup>167</sup> He saw that Russian control of the Straits would threaten the security of his empire. The United States, with its powerful navy and its strong ties to Western Europe, has established itself as the dominant Western naval power in the Mediterranean and has committed its resources to the defense of Western Europe. In order to adequately protect Western Europe, the defense of its northern and southern flanks must be assured.<sup>168</sup> The presence of the American Sixth Fleet in the Mediterranean strengthens the security of the southern flank. But that fleet is now being challenged by the newer, more numerous Soviet fleet.<sup>169</sup> The free entry of Soviet aircraft carriers into the Mediterranean would not only facilitate Soviet expansionism there but also alter the balance of power in the Mediterranean, the Persian Gulf, and the Indian Ocean.<sup>170</sup> Thus,

---

167. Quoted in VÁLI, STRAITS, *supra* note 10, at ix.

168. *Id.* at 151. Concerning the defense of Europe's southern flank, see Johnston, *NATO's Southern Region: Problems and Prospects*, U.S. NAVAL INST. PROC., Jan. 1975, at 47.

169. When the *Kiev* joined the Soviet Mediterranean squadron in July 1976, that squadron, which is drawn from the Black Sea Fleet, numbered 56 surface ships and an estimated 10 to 12 submarines. At the same time the United States Sixth Fleet numbered only 43 ships plus submarines. N.Y. Times, July 22, 1976, at 5, col. 1. The Soviet naval buildup appears to be motivated by Moscow's desire to gain the "ability to cut vital Western sea lanes in case of war—and to cure its past inability to use military power in time of peace to support political objectives far beyond Russia's own borders. L.A. Times, July 27, 1976, pt. II, at 6, cols. 1 & 2. But see L.A. Times Nov. 11, 1976, pt. I-A, at 1, col. 1, suggesting that the lack of home port facilities for the Soviet fleet prevents it from posing a serious threat to NATO forces in the Mediterranean.

Rear Admiral Harvey, Director of Naval Intelligence, explains why total numbers of ships are not conclusive in judging the naval balance:

We and our allies must depend on ocean commerce for our economic as well as our military survival. The Soviets are essentially a continental power and though they are increasingly exploiting the benefits of the sea, those benefits are not vital to their continued existence. [T]he U.S. Navy must be prepared to control those sea areas required to fulfil our objectives while the Soviets need only be prepared to deny us this use of the sea.

Statement, *supra* note 93, at 2. See also note 96 *supra*.

170. The *Kiev*, unlike the American supercarriers, enjoys rapid access to

as long as the United States maintains its interest in Western Europe, the defense of the Mediterranean, including Turkey and the Turkish Straits, must be paramount in Washington's geo-strategic approach.<sup>171</sup> So long as Turkey and its all-important Straits stand in line with the defense of the Western world, containment of Soviet advances is a possibility. Should these vital Straits be lost, both NATO's and the United States' position in the Mediterranean would be seriously jeopardized.<sup>172</sup>

### CONCLUSION

The Turkish Straits, by virtue of their geographic position, form a strategic choke point for both entry into and egress from the Black Sea. Throughout their history, these important Straits have enjoyed both special treatment under international law and special attention from Turkey's neighbors, particularly Russia and the Soviet Union. Since 1936, the Montreux Convention has governed transit of the Straits.

Analysis of the Convention indicates that its drafters intended to prohibit transit of all aircraft carriers through the Straits. Logical analysis also shows that the Soviet "antisubmarine cruiser" *Kiev*

---

the Persian Gulf and Indian Ocean because it is small enough to transit the Suez Canal. Prina, *supra* note 79, at 11. The long closure of the Suez Canal actually benefitted the West by preventing Soviet expansion into the Indian Ocean. See VÁLI, STRAITS, *supra* note 10, at 159. Concerning the importance of the Suez Canal in Soviet strategic thinking, see Slonim, *Suez and the Soviets*, U.S. NAVAL INST. PROC., Apr. 1975, at 36.

Secretary of State Kissinger voiced his concern over such changes in the balance of power: "In the nuclear age, once a change in geopolitical balance has become unambiguous, it is too late to do anything about it. However great our strength, it will prove empty if we do not resist seemingly marginal changes whose cumulative impact can undermine our security." Address by Secretary of State Henry Kissinger, International Institute for Strategic Studies, in London (July 26, 1976), reprinted in 74 DEP'T STATE BULL. 105 (1976).

171. VÁLI, STRAITS, *supra* note 10, at 152.

Our longstanding relationship with Turkey is not simply a favor to Turkey; it is a clear and essential mutual interest. Turkey lies on the rim of the Soviet Union and at the gates of the Middle East. It is vital to the security of the eastern Mediterranean, the southern flank of Western Europe, and the collective security of the Western alliance. Our U.S. military bases in Turkey are as critical to our own security as they are to the defense of NATO.

Address by President Gerald Ford before a Joint Session of Congress (Apr. 10, 1975), reprinted in 72 DEP'T STATE BULL. 534 (1975).

172. VÁLI, STRAITS, *supra* note 10, at 162.

is an aircraft carrier as defined by Annex II to the Convention. Yet, the *Kiev* succeeded in transiting the Turkish Straits without protest from any of the Convention signatories.

The ease with which the *Kiev* steamed through the Turkish Straits highlights the Montreux Convention's present inadequacies. But other factors may also have contributed to the *Kiev*'s success—for example, Turkey's desire to placate its powerful eastern neighbor.<sup>173</sup> Whatever the reasons for the *Kiev*'s successful transit, they are mostly political, not logical or legal.

Certainly the Convention needs revision, but because of potential major disagreements among the prospective parties to any new convention, revision appears fruitful only in the area of technological update. Yet even in this area one of the major parties stands to lose. If new categories are adopted which do not allow *Kiev*-class warships to pass through the Straits, the Soviets will have lost a right they presently enjoy. Conversely, if *Kiev*-class vessels are placed in a new category for which passage is permitted, the West will have lost the advantage of the Convention's present restrictions on transit of aircraft carriers. Because revision of the Convention offers so little potential for gain, the Soviet Union will probably attempt other means to achieve its goals with respect to the Turkish Straits. Indeed, the *Kiev* itself appears to be an example of one such effort to avoid the restrictions of the Montreux Convention by appearing to comply with them.

Thus, on the question of Soviet aircraft carriers transiting the Turkish Straits, the language of the Montreux Convention supports one position while State practice supports an opposite position. The two could be reconciled by revising the Convention, but revision is fraught with pitfalls. So long as the major powers remain diametrically opposed concerning the content of a future Straits regime, the probabilities of failing to agree are high.

In the midst of this controversy, Turkey occupies an unenviable position, for it holds the key to the Straits. Turkey's conscientious and even-handed administration of the Straits regime largely accounts for the Montreux Convention's continued vitality after forty years. For the West to accuse Turkey of political favoritism in its administration of the Straits regime not only would weaken its ties with Turkey, but also would push Turkey further toward

---

173. See Prina, *supra* note 79, at 11; cf. Lewis, *supra* note 109: "The Turks are not likely to interpret the Convention so harshly that they would antagonize their most powerful neighbor by prohibiting the transit of that neighbors [sic] newest and most powerful warship."

the Soviet sphere of influence. Indeed, the West cannot realistically expect Turkey to ignore the political realities of Soviet pressure. The pressures upon Turkey from the Soviets are enormous. The two countries share a common border; large Soviet naval squadrons sail the seas which wash both of Turkey's coasts, and since the days of Alexander I, Russians have coveted the "Black Sea" Straits.

For the West, the Straits form a vital link in the chain forged to contain Soviet expansion. If the Western allies desire to continue their policy of containment in order to protect Europe's southern flank and to prevent Soviet expansion in the Middle East and beyond, they must make unequivocal commitments to Turkey—commitments leaving no doubt that Turkey will enjoy strong military and economic support in opposing Soviet pressures.

The Montreux Convention is not yet a dead letter, but the *Kiev's* transit has weakened it.<sup>174</sup> And political realities disfavor its early revision. The defense of Turkey and the retention of control of the Straits in the safe hands of their territorial sovereign are essential elements of Europe's defense,<sup>175</sup> for the West's best hope for a fairly administered Straits regime lies with a strong and independent Turkey. That independence assured, the Turkish government may then become more favorably disposed toward reconsidering transit rights for *Kiev*-class vessels in light of both the wording of the Convention and the discovered meaning of the label *antisubmarine cruiser*. The problem of *Kiev* and the Turkish Straits is largely one of words and their meanings. And like the children's story, in the end this problem resolves itself to a question of "which is to be master—that's all."

F. DAVID FROMAN

---

174. See Pardo, *Foreword, Law of the Sea IX*, 14 SAN DIEGO L. REV. 507, 508-09 (1977):

Mr. Froman convincingly demonstrates that the passage of the *Kiev* has weakened the 1936 Montreux Convention and that continued failure on the part of Turkey and the NATO powers to oppose evasion of its terms may deprive the Convention of all meaning, with incalculable political and strategic consequences in the Mediterranean and the Indian Ocean.

175. VÁLI, STRAITS, *supra* note 10, at 151.